

THE HONORABLE JAMES L. ROBERT

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OCT 21 2011

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SANDRA PALMER,

Plaintiff,

v.

SPRINT SOLUTIONS, INC.

Defendant.

No. 09-cv-01211 JLR

~~PROPOSED~~ JUDGMENT AND ORDER OF
FINAL APPROVAL

NOTE ON MOTION CALENDAR:
October 21, 2011

JLR

THIS MATTER came before the Court on the Parties' Motion for Final Approval of the Settlement Agreement and for Entry of a Final Order and Judgment concluding this action.

The Court, having considered the arguments of the parties, the papers submitted in support thereof and objections thereto presented at the Final Settlement Hearing on October 21, 2011, and all other matters properly before the Court, hereby ORDERS:

1. Except as specifically noted below, the Court for purposes of this Order adopts the definitions set forth in the Parties' Settlement Agreement, attached as Exhibit A to the Parties' Joint Motion for Preliminary Approval, Dkt No. 61-1. All capitalized terms in this Order shall have the same meaning as in the Agreement.



09-CV-01211-JGM

[PROPOSED] JUDGMENT AND ORDER OF FINAL
APPROVAL (No. 09-cv-01211 JLR) - 1

**WILLIAMSON
& WILLIAMS**

17253 AGATE STREET NE
BAINBRIDGE ISLAND, WA 98110
(206) 780-4477
(206) 780-5557 (FAX)
www.williamsonlaw.com

I. JURISDICTION

2. This Court has jurisdiction over the subject matter of this Action and over all Parties to the Settlement Agreement, including all Class Members, except those who timely and validly requested exclusion under the Settlement Agreement.

II. FINAL CERTIFICATION OF CLASSES

3. The Classes, which the Court provisionally certified on June 13, 2011, are hereby finally approved. They are:

a. Individual, non-government, and non-business Sprint customers from July 23, 2005 to the date the Court grants preliminary approval of this settlement who, while Sprint customers, resided in Washington State and received from Sprint directly or from its agents one or more commercial telephone solicitations that used an automatic dialing and announcing device. This subclass does not include Sprint employees.

b. Individual, non-government, and non-business Sprint customers from July 23, 2005 to the date the Court grants preliminary approval of this settlement who, while Sprint customers, resided in Washington State and received from Sprint directly or from its agents one or more commercial telephone solicitations less than one year after advising Sprint or its agent that he or she did not wish to be called again by Sprint. This subclass does not include Sprint employees.

c. Individual, non-government, and non-business Sprint customers from July 23, 2005 to the date the Court grants preliminary approval of this settlement who, while Sprint customers, resided in the United States and received from Sprint directly or from its agents one or more commercial telephone solicitations more than 30 days after making a Sprint-specific internal Do Not Call request by advising Sprint or its agent that he or she did not wish to be called again by Sprint. This subclass does not include Sprint employees.

1 4. A list of those Class Members who have timely and properly requested exclusion
2 from the Classes is appended to this Judgment and Order of Final Approval as Attachment A.
3 The Defendant, the Related Parties, and the Judge to whom this case is assigned and any
4 immediate family members thereof are also excluded.

5 5. For purposes of the settlement of this action (and only for such purposes without
6 an adjudication of the merits), the Court finds that the requirement of the Federal Rules of Civil
7 Procedure, the United States Constitution, the Rules of this Court, and any other applicable laws
8 have been met. The Court finds:

9 5.1 Each Class consists of up to thousands of Class Members from throughout
10 Washington State and the United States. The Class Members are so numerous that their joinder
11 before the Court would be impracticable.

12 5.2 In each Class, there are several questions of fact and law common to Class
13 Members. For the subclass described in 3(a) above: whether the message in question was a
14 commercial solicitation, (2) whether the solicitations violated Washington law, (3) whether
15 applicable Washington law is preempted by the federal TCPA. For the subclass described in
16 3(b) above, involving claims by Washington state residents under the Washington Telephone
17 Solicitation Act: (1) whether an individual had requested that calls not be made; (2) whether
18 further calls were made to the individual; (3) how many calls were made in the 12-month period
19 following a request not to be called, and (4) whether the calls made were for purposes of
20 solicitation. For the subclass described in 3(c) above: (1) whether and how many calls were
21 made to the class member after asking to be on Sprint's internal Do Not Call list; (2) whether the
22 class member had in fact requested that Sprint not call them for telemarketing purposes; and
23 (3) whether the calls were made more than 30 days after the individual made the request. All of
24 these questions of law and fact are common to members of the Classes and FRCP 23(a)(2)'s
25 commonality requirement is fully satisfied
26

1
2 5.3 In each Class, the claims of the named plaintiff are typical of the Class.
3 The pre-recorded message she claims she received was identical to a message received by other
4 members of the subclass. Also, her claims that she asked Sprint or its agent to not call her again
5 and within one year of that request received further calls, including some she received more than
6 30 days after she requested that she not be called again, are typical of the Class.

7 5.4 Plaintiff and her counsel have fairly and adequately protected the interests
8 of the classes. Plaintiff was aware of the issues and facts that are the basis of the class claims,
9 cooperated in providing discovery responses as requested by Sprint, was deposed by Sprint, and
10 participated in the mediation. Plaintiff's counsel diligently pursued her claims and is experienced
11 in class action litigation, particularly in the area of claimed violations of the Telephone
12 Consumer Protection Act and its Washington State counterparts.

13 5.5 In each Class, the resolution of this action in the manner proposed in the
14 Agreement is superior to other available methods for a fair and efficient adjudication of the
15 action and the common issues predominate over individual issues. Class members do not have
16 interests in individually controlling the prosecution of separate actions, there is no other
17 litigation pending concerning the controversy, it is desirable to concentrate the litigation of the
18 claims in this forum, and management of this class action will be both efficient and effective.
19 Class treatment will facilitate the resolution of all Class Members' claims. The Claims
20 Administration process will identify and resolve complaints without burdening the courts or
21 regulators and will provide a substantial benefit to Class Members. The use of the class action
22 device will offer a more efficient and fair means of adjudicating the claims at issue, conserve
23 judicial resources, and promote consistency and efficacy of adjudication by avoiding multiple
24 individual suits or piecemeal litigation.

25 6. In making these findings, the Court has considered: (a) the interests of the Class
26 Members in individually controlling the prosecution of the defense or defense of separate
actions; (b) the impracticability or inefficiency of prosecuting or defending separate actions;

- 1 (c) the extent and nature of any litigation concerning these claims already commenced; and
2 (d) the desirability of concentrating the litigation of the claims in a particular forum.
3

4 III. FINAL APPROVAL OF NOTICE

5 7. The Notice of Provisional Class Certification and of Preliminary Approval of the
6 Settlement given pursuant to the Court's preliminary order of approval, dated June 13, 2011, Dkt
7 No. 73 fully complied with Fed. R. Civ. P. 23 (b)(2)(B) and 23(e)(1)(B), the Washington State
8 Constitution, and the United States Constitution.

9 8. The form and means of this Notice provided individual notice to all Class
10 Members who were individually identifiable with reasonable efforts and provided the best notice
11 practicable under the circumstances to all other potential members of the Classes.

12 9. The means of notice were reasonably calculated, under the circumstances, to
13 apprise Class Members of (i) the pendency of this class action, (ii) their right to exclude
14 themselves from the proposed settlement, (iii) their right to object to any aspect of the proposed
15 settlement (including final certification of the settlement class; the fairness, reasonableness or
16 adequacy of the proposed settlement; the adequacy of the Class's representation by Plaintiff or
17 Class Counsel, and the award of attorneys fees and costs and the award to the Class
18 Representative); (iv) if they did not exclude themselves from the Class, their right to appear and
19 the Final Settlement Hearing (either on their own or through counsel); and (v) the binding effect
20 of the orders and Final Order and Judgment in this action, whether favorable or unfavorable, on
21 all persons who do not request exclusion from the Class.

22 10. The means of notice were reasonable and constitute due, adequate, and sufficient
23 notice to all persons entitled to be provided with notice.

24 11. The Parties have complied with the necessary notice under the Class Action
25 Fairness Act, 28 U.S.C. § 1712.
26

IV. FINAL APPROVAL OF THE SETTLEMENT AGREEMENT

12. The agreement of the Parties set forth in the Settlement Agreement, attached as Exhibit A to the Parties' Joint Motion for Preliminary Approval, is now hereby approved as fair, reasonable, and adequate to all Class Members, pursuant to the Federal Rules of Civil Procedure, the United States Constitution, the Washington State Constitution, and any other applicable laws.

13. The Court finds this based on the following factors: (i) there was no fraud or collusion underlying the settlement and it was reached after good faith and arms-length negotiations, warrant a presumption in favor of approval; (ii) the complexity, expense, and likely duration of the litigation favors settlement, which provides meaningful benefits on a much shorter timeline and less expensive basis than otherwise possible; (iii) the Parties had developed a sufficient factual records to evaluate their chances of success at trial and the proposed settlement; (iv) the participation of Class Counsel, who are skilled in class action litigation such as this and the Plaintiff, who participated in the litigation, support approval; (v) the settlement provide meaningful relief to Class Members; and (vi) the positive response of the Class, as seen in a very small number of opt-outs and objections, favors final approval.

14. The Court has considered any objections and hereby overrules any objections.

15. In accordance with this Final Approval, the Court directs the Claims Administrator to administer the Claims according to Section X of the Settlement Agreement and the Payment Protocol, which is attached as Exhibit 7 to the Settlement Agreement.

16. The Court also directs the Parties, to the extent they have not already done so, to fund the Escrow Account in accordance with the terms of the Settlement Agreement.

V. AWARD OF ATTORNEYS' FEES AND INCENTIVE PAYMENT

17. Pursuant to the Plaintiff's Motion for Attorneys Fees and Costs, the Court hereby approves an award of Class Counsel attorneys' fees and costs of ^{1,540,000} \$1,650,000.00 to be paid in the manner provided in the Settlement Agreement. This award is not a liability of Defendant except

1 as provided in the Settlement Agreement. The Defendant and the Class Representative shall
2 assume responsibility for their own attorney's fees, expenses, and costs, except for this award.

3 18. The Court further hereby approves an incentive payment of ^{17,500.00}~~\$20,000.00~~ to the
4 Plaintiff to be paid as provided in the Settlement Agreement. This payment is not a liability of
5 Defendant except as provided in the Settlement Agreement.
6

7 **VI. DISMISSAL AND BARRING OF CLAIMS**

8 19. This Action is hereby dismissed on the merits and with prejudice and the Release
9 contained in the Agreement is effective as of the date of this Final Order and Judgment and
10 forever discharges the Released Parties from the Released Claims.

11 20. All Class Members, except those who timely and validly requested exclusion, are
12 bound by this Order and are forever barred from instituting, maintaining, or prosecuting any of
13 the Released Claims against the Defendant or its Related Parties. The Class Representative,
14 Class Members, and their Related Parties, without any further action, fully, finally and forever
15 release, relinquish, and discharge the Released Parties from the Released Claims, and without
16 limiting the breadth of this release, the Class Members and their Related Parties who did not
17 validly request exclusion from the Class, regardless of whether the Class Members received a
18 payment from the Common Fund or execute and deliver the Claim Form and Release, on behalf
19 of themselves and their Related Parties, without any further action, have fully, finally, and
20 forever released, relinquished, and discharged the Released Party from the Released Claims and,
21 by operation of the Judgment, all of the Released Claims that any Releasing Party has or had
22 against the Released Party shall be dismissed with prejudice.

23 21. Neither the Settlement Agreement, nor any of its attachments, terms, or
24 provisions, nor any document executed pursuant to it, nor any other act taken to negotiate or
25 carry it out, shall be construed as or raise any presumption or inference of a concession or
26 admission, or a waiver of any right, claim, or defense of any party to it or any Class Member,
except insofar as such rights, claims, or defenses are expressly released or discharged by this

1 Order. The Agreement shall have no precedential, collateral estoppel, statute of limitations or
2 *res judicata* effect against Defendant (or its respective Related Parties) in any matter or
3 proceeding other than this Action or in a proceeding involving an effort to enforce the Settlement
4 Agreement, including, but not limited, an effort to enforce the release of the Released Claims.
5

6 22. Neither the Settlement Agreement, nor any of its attachments, terms, or
7 provisions, nor any document executed pursuant to it, nor any other act taken to negotiate it or
8 carry it out shall be referred to, offered as evidence, or received in evidence in any pending or
9 future civil, criminal, or administrative action or proceeding, except in any proceeding to enforce
10 the terms of the Settlement Agreement.

11 VII. RETENTION OF JURISDICTION

12 23. The Court retains continuing and exclusive jurisdiction over the Parties to the
13 Settlement, including all Class Members, for purposes of supervising the implementation,
14 enforcement, construction, and interpretation of the Settlement Agreement. This does not affect,
15 in any way, the finalization of this Final Order and Judgment.

16 VIII. ENTRY OF JUDGMENT

17 24. This is a final judgment disposing of all claims and parties. The Court directs the
18 Clerk to immediately enter this Final Order and Judgment.

19 DATED this 21ST day of October, 2011.

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23 THE HONORABLE JAMES L. ROBERT
24 United States District Judge
25
26

1
2 Presented by:

3 s/ Rob Williamson

4 Rob Williamson, WSBA #11387

5 Kim Williams, WSBA #9077

6 **Williamson & Williams**

7 17253 Agate Street NE

8 Bainbridge Island, WA. 98110

9 Phone: (206) 780-4457

10 roblin@williamslaw.com

11 kim@williamslaw.com

12 *Attorneys for Plaintiff*

13 *Sandra Palmer*
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OF FINAL APPROVAL (No. 09-cv-01211 JLR) - 9

**WILLIAMSON
& WILLIAMS** 17253 AGATE STREET NE
BAINBRIDGE ISLAND, WA 98110
(206) 780-4447
(206) 780-5557 FAX
www.williamslaw.com

Attachment A

Palmer v. Sprint Solutions, Inc.

Timely Exclusions Received as of September 29, 2011

GCG ID No	Name	City	State
658	CAROL PALMER	FOREST HILL	NY
2386	JOYCE H FLANAGAN	CANTON	GA
2390	ROBERT S BURKHARD	SPARTANBURG	SC
2391	PRISCILLA MAESTAS	SAN DIEGO	CA
4291	MELINDA ARBALLO	LAS VEGAS	NV
5579	JESSE GRANT MACLURE	CHUBBUCK	ID
8253	CHARLES GONZALES	BOISE	ID
13190	SAMANTHA BURDEN	GOOSE CREEK	SC
13198	GUSTAVO OCHOA	CHANNELVIEW	TX
13210	CINDY LINDENMAN	HAWTHORNE	CA
18215	DAVID MITCHELL LUKE	TALLAHASSEE	FL
18315	COLIN N VICKERS	FULSHEAR	TX
18321	DAVID BARNES	SAN FRANCISCO	CA
18323	BRUCE THOMAS ROENSCH	SIMPSONVILLE	SC
20923	JAN M HEATH	N FORT MEYERS	FL
20924	LINDA ARIZMENDEZ	BOVINA	TX
20926	TERRY A PINKERTON	SIOUX FALLS	SD
20928	LAURA E ROGERS	SANTA ROSA	CA
20932	DAVID J AUSTIN	SANDY	UT
20934	MICHELLE LYNN GAMACHE	BALLWIN	MO
20937	LATOYA JOHNSON	MONTGOMERY	AL
20940	JENNIE P MARTINEZ	MONTEBELLO	CA
20946	LILY L TAING	COPPERAS COVE	TX
20948	JASON PIRGA	SAN DIEGO	CA
20951	YEECHEN LEONG	PLEASANTON	CA
20952	SONIA BENEDICT	PENDLETON	OR
21562	TOMOKO YAMAGUCHI	HOUSTON	TX
21564	RAMON PRECIADO	LOS ANGELES	CA
21568	CHRISTOPHER HEMMER	CLOVIS	NM
22472	JEREMY SHEAR	HENDERSON	NY
22483	ERIKA PENECALE	LAREDO	TX
22489	CASSANDRA ESTES	CHICAGO	IL
22491	BECKY SCHANZ	CHICAGO	IL
22493	ETHEL BERNEZ HODGE	HORN LAKE	MS
23072	VANNESSA GARRETT	LOS ANGELES	CA
23073	MARY E HATFIELD	ANNAPOLIS	MD
23570	CARL NELSON	INDIANAPOLIS	IN
23849	MARIA ALEMAN	RUSSELLVILLE	AR
24458	KRISTEN JOHNSON	FORT LUPTON	CO
24683	JAMES DETWEILER	JBER	AK
24684	ERNESTINA SALINAS	LA BLANCA	TX
24990	BARBARA WEST	GOODYEAR	AZ
25510	MICHAEL VINCENT	DOUGLASS	KS
25938	GLADYS MCLEAN	RAEFORD	NC
25939	TRACY SISCO	CIBOLO	TX
25940	ALLISON BATES	CORVALLIS	OR

*Palmer v. Sprint Solutions, Inc.***Timely Exclusions Received as of September 29, 2011**

GCG ID No	Name	City	State
25942	EVAN AND SYLVIA BAYLIS	ALEXANDRIA	VA
26311	KRISTINE SINRAM	LAVONIA	GA
26314	SARAH GRUNTMAN	DEARBORN	MI
26316	TRENT PERSHALL	BOTHELL	WA
26511	YVONNE WILSON	MILWAUKEE	WI
26765	ANA M CARRANZA	PHOENIX	AZ
26766	SCOTT D MASON	SAN FRANCISCO	CA
26768	LORRE W MASON	SAN FRANCISCO	CA
26780	SHARON THOMAS	MADISON	MS
26816	DONALD ROBERSON	PRESCOTT	AZ
26817	NANCY ROBERSON	PRESCOTT	AZ
27101	BEATRICE COATS	JACKSON	MS
27103	LEE SEYFFERT	TROY	MO
27104	VELA NELSON	MULBERRY	FL
27105	VIVIAN ALEXANDER	TORRANCE	CA
27107	GUILLERMO TORRES MEDEL	FRESNO	CA
27234	LYNN A DAHLBERG	ST AUGUSTINE	FL
27332	DEANETTE ROSE	BROOKLYN	NY
27346	LEONARD MCPETERS	GRANT	AL
1135500	MONSITA CORREA	VENICE	FL
1515898	CARROLL SPAFFORD	STEVENSVILLE	MI
1827188	ZULY COLINDRES	HOLLYWOOD	FL
2405814	NELSON GASPARIAN	WESTPORT	CT
2642201	LUIS BENEZARIO	BAYAMON	PR
2854015	SUZETTE BLACK	PHILADELPHIA	PA
3343732	NALINI PARAMASIVAM	NEW ALBANY	OH
4016975	CYNTHIA LEONARD	RIVERDALE	IL
4383554	BRIAN SHELBOURN	DULLES	VA
4622485	JAMES MORRISON	POTTSTOWN	PA
4626487	JONATHAN SATO	CAMPBELL	CA
4840597	ORLANDO R SANCHEZ	HIALEAH	FL
5271825	RICHARD BAUMANN	SEATTLE	WA
5916934	CHANDRASEKA RATHANAVEL	NEW ALBANY	OH
6003883	NICHOLAS D'ACOSTA	MIAMI	FL
6310612	JAMES M DAVIS, SR	ORIENT	OH
6558717	SHERI LIN	SAN JOSE	CA
6607884	GLEN GARGUS	OLATHE	KS
6723876	MELISSA PADILLA	JONESBORO	GA
6774892	AIDKE ADEBESIN	PASADENA	CA
6809895	ELLEN CONNER	WENATCHEE	WA
6814330	BEVERLY DEZARRAGA	SEAL BEACH	CA
6872244	MARY SMITH	SALEM	NJ
6885835	CONCETTA JOHNSON	NEWARK	NJ
6888557	VICTOR SAWELENKO	AGOURA HILLS	CA
6971929	JUSTIN ZIMMERMAN	HAINES CITY	FL
6992229	THANA LANGUEDOC	GRAND RAPIDS	MI

*Palmer v. Sprint Solutions, Inc.***Timely Exclusions Received as of September 29, 2011**

GCG ID No	Name	City	State
6994797	JON DAY	OVERLAND PARK	KS
7174713	PAUL KEESLEY	COLUMBIA	SC
7185367	LAURA KINNINGER DEANNE EALEY	SAN DIEGO	CA
7310228	JOHN BURDEN	GOOSE CREEK	SC
7329085	CHRIS PONCE	SALINAS	CA
7334711	JOSEPH MOTYKA	EVERETT	WA